

LIBRARY  
SUPREME COURT. U. S.

Office Supreme Court, U.S.

FILED

AUG 18 1958

JAMES R. BROWNING, Clerk

IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1957

No. [REDACTED]

EMANUEL BROWN,  
*Petitioner,*  
*against*

UNITED STATES OF AMERICA,  
*Respondent.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SECOND CIRCUIT

**PETITIONER'S BRIEF**

MYRON L. SHAPIRO and  
J. BERTRAM WEGMAN,  
*Counsel for Petitioner,*  
60 Wall Street,  
New York 5, N. Y.

MYRON L. SHAPIRO,  
*Of Counsel.*

# INDEX

---

	PAGE
PETITIONER'S BRIEF .....	1
OPINION BELOW .....	1
JURISDICTION .....	1
QUESTIONS PRESENTED FOR REVIEW .....	2
CONSTITUTIONAL PROVISIONS, STATUTES and REGULA- TIONS INVOLVED .....	4
STATEMENT OF THE CASE .....	4
ARGUMENT .....	13

POINT I—Congress in §305(d), Motor Carriers Act did not intend to make the immunity provisions of §46, Interstate Commerce Act, applicable to Grand Jury investigations of offenses under the Motor Carriers Act. Consequently Petitioner could not receive immunity and was entitled to refuse to answer the questions because of possible self-incrimination .....

13

POINT II—Assuming that immunity was conferred upon Petitioner by section 305(d), Motor Carriers Act, this immunity was not co-extensive with his constitutional privilege against self-incrimination .....

19

POINT III—The District Court proceedings deprived petitioner of his rights under Rule 42(b) of Criminal Procedure and the constitutional requirements of Due Process and the fundamental fairness required in Federal criminal proceedings. Petitioner was compelled to testify against himself in a criminal proceeding. The fundamental safeguards due the defendant in a criminal cause were not accorded Petitioner .....	22
A. Rights of a Recalcitrant Jury Witness .....	23
B. Correct Procedure in Grand Jury Contempts .....	25
C. Petitioner Could Not be Compelled to Take the Stand .....	28
D. The Secrecy of the Proceedings .....	30
POINT IV—The sentence was an abuse of discretion and improper .....	31
CONCLUSION .....	32
APPENDIX TO BRIEF .....	33

### Table of Cases

<i>Blaine v. United States</i> , 29 F. 2d 651 (C.A., 5) .....	18
<i>Cammer v. U. S.</i> , 350 U. S. 399 .....	23, 30
<i>Carlson v. U. S.</i> , 209 F. 2d 209, 216 (C.A., 1) .....	25, 26, 27
<i>Conley v. U. S.</i> , 59 F. 2d 929 (C.A., 8) .....	31
<i>Cooke v. United States</i> , 267 U. S. 517 .....	25
<i>Counselman v. Hitchcock</i> , 142 U. S. 547 .....	19, 21
<i>Ex Parte Savin</i> , 131 U. S. 267 .....	25, 29

<i>Gompers v. Buck's Stove &amp; Range Co.</i> , 221 U. S. 418, 444 .....	24, 30
<i>Gompers v. U. S.</i> , 233 U. S. 604 .....	29
<i>Hale v. Henkel</i> , 201 U. S. 43, 66 (1906) .....	17
<i>Hill v. U. S.</i> , 300 U. S. 105 .....	31
<i>Matter of Doyle</i> , 257 N. Y. 244, 268, 269 .....	16
<i>Matusow v. United States</i> , 229 F. 2d 335 .....	24
<i>Michaelson v. U. S.</i> , 266 U. S. 42, 66 .....	30
<i>Moore v. U. S.</i> , 150 F. 2d 323 (C.A., 10) .....	32
<i>Powell v. U. S.</i> , 226 F. 2d 269 .....	26
<i>Re Michael</i> , 326 U. S. 224 .....	23, 24, 30
<i>Nye v. U. S.</i> , 313 U. S. 33 .....	23, 30
<i>Re Oliver</i> , 333 U. S. 257, 275 .....	27, 28
<i>Sherwin v. United States</i> , 268 U. S. 369 .....	18
<i>U. S. v. Andolschek</i> , 142 F. 2d 503 .....	22
<i>U. S. v. Courtney</i> , 236 F. 2d 921 .....	31
<i>U. S. v. Curcio</i> , 234 F. 2d 470 reversed 354 U. S. 118 .....	22, 32
<i>U. S. v. Gordon</i> , 236 F. 2d 921 .....	31
<i>U. S. v. Lawn</i> , 115 F. Supp. 674, 677 .....	30
<i>U. S. v. Onassis</i> , 125 F. Supp. 190 .....	22
<i>U. S. v. Price</i> , 96 Fed. 960 (D. Ky.) .....	20
<i>U. S. v. Scully</i> , 225 F. 2d 113 (C.A., 2) .....	30
<i>U. S. v. Shreveport Grain &amp; E. Co.</i> , 287 U. S. 77, 82, 83 .....	14
<i>U. S. v. Trock</i> , 232 F. 2d 839 .....	32
<i>U. S. v. United Mine Workers</i> , 330 U. S. 258, 302 .....	32
<i>U. S. v. Weinberg</i> , 65 F. 2d 394 .....	32
<i>U. S. v. Zwillman</i> , 108 F. 2d 802 .....	22
<i>Warring v. Huff</i> , 122 F. 2d 641 (App. D.C.) .....	31
<i>Wong Gim Ying v. U. S.</i> , 231 F. 2d 776, 779, 780 ....	25, 28

## Statutes

	PAGE
Atomic Energy Act, Immunity Provision, Title 42, U.S.C., §2201(c) .....	17, 39
China Trade Act, Title 15, U.S.C., §155 .....	17, 38
Civil Aeronautics Act, Title 49, U.S.C., Ch. 9, §644(i) .....	16, 45
Code of Criminal Procedure	
§401, Title 18, U.S.C., Power of court .....	8, 27, 38
§3481, Title 18, U.S.C., Competency of accused .....	31, 38
Commodity Exchange Act, Title 7, U.S.C., §15 .....	17, 42
Defense Production Act of 1950, Title 50, U.S.C., App. §2155(a), (b) .....	18, 46
Emergency Price Control Act, 56 Stat. 30 (1942), §202 .....	18, 43
Export Controls Act, Title 50, App., U.S.C., §2026 .....	18, 45
Federal Communications Act, 47 U.S.C., §409 (1)...	16, 50
Federal Deposit Insurance Corporation Law, Title 12, U.S.C., §1820 .....	18, 44
Federal Rules of Criminal Procedure	
Rule 42. Criminal Contempt	
(a) Summary Disposition .....	2, 3, 8, 10, 26, 28, 30, 37
(b) Disposition Upon Notice and Hearing.....	3, 10, 22, 23, 26, 27, 28, 29, 30, 37
Federal Trade Commission Act, Immunity Pro- vision, Title 15, U.S.C., Ch. 2, Section 49 .....	17, 34
Immunity Act of 1954, Title 18, U.S.C., §3486(c) .....	18, 43
Industrial Alcohol Act, 54 Stat. 363, §3119, Title 26, U.S.C. (1946 Ed.) .....	16, 45
Investment Companies Act, Title 15, U.S.C., §80a- 41(d) .....	16, 48
Investment Advisers Act, Title 15, U.S.C., §80b-9(d) .....	16, 47
Interstate Commerce Act, Title 49, U.S.C., §46.....	2, 5, 9, 13, 15, 17, 19, 21, 33

Merchant Marine Act, 1936, Immunity Provision, Title 46, U.S.C., Section 1124 (c) .....	17, 35
Motor Carriers Act, Immunity Provision, Title 49, U.S.C., Ch. 8, Section 305 (d) .....	2, 6, 8, 9, 13, 14, 15, 17, 18, 19, 20, 22, 33
Motor Carriers Act, Title 49, U.S.C., §322 .....	5, 33, 41
Narcotics Control Act, Title 18, U.S.C., §1406 .....	18, 49
Natural Gas Act, Title 15, U.S.C., 717m .....	16, 50
National Prohibition Act, 27 U.S.C.A. (1927 ed.), §45 .....	18
Perishable Commodities Act, Immunity Provision, Title 7, U.S.C., Section 499m (f) .....	17, 36
Public Utility Holding Company Act, Title 15, U.S.C., §79r .....	16, 48
Rent Control Act, Immunity Provision, Title 50, U.S.C., War App., §1896 (f) (1), (3), (6) .....	18, 40
Second War Powers Act, Title 50, App., U.S.C., §643a .....	16, 47
Securities Act of 1933, Immunity Provision, Title 15, U.S.C., Ch. 2a, Section 77v (c) .....	16, 35
Securities Exchange Act, Title 15, U.S.C., §78u(d) .....	16, 49
Shipping Act of 1916, Title 46, U.S.C., §827 .....	16, 49
Social Security Act, Immunity Provision, Title 42, U.S.C., §405, (d), (f) .....	17, 39
Taft-Hartley Act, Immunity Provision, Title 29, U.S.C., Section 161(3) .....	17, 37
War and Defense Contract Acts of 1951, Title 50, App., U.S.C., §1152(a) (4) .....	16, 47
United States Constitution:	
Amendment V .....	42
Amendment VI .....	42
Amendment VIII .....	42

IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1957

No. 356

---

EMANUEL BROWN,  
*Petitioner,*

: *against*

UNITED STATES OF AMERICA,  
*Respondent.*

---

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SECOND CIRCUIT

---

**PETITIONER'S BRIEF**

Certiorari has been granted to review petitioner's conviction for criminal contempt in refusing to answer certain questions in a grand jury inquiry. Petitioner was sentenced to fifteen (15) months imprisonment. On appeal the Court of Appeals for the Second Circuit affirmed.

**Opinion Below**

The opinion of the Court of Appeals (R. 52) is printed at 247 F. 2d 332. The District Court's opinion (R. 34) is not officially printed.

**Jurisdiction**

The judgment (R. 64) of the Court below was dated and entered on July 10, 1957. Jurisdiction to review such

judgment by certiorari is conferred on this Court by §1254, Title 28, U.S.C. and is invoked pursuant thereto and Rule 37(b), Federal Rules of Criminal Procedure.

### Questions Presented for Review

1. Whether pursuant to §305(d), Motor Carriers Act (49 U.S.C.) [*infra*, p. 33], a witness in a grand jury inquiry into alleged offenses under §322 [*infra*, p. 41] of that Act obtains immunity from prosecution for any transaction or offense concerning which he under compulsion may there testify or produce evidence.

a. Whether Congress in enacting §305(d), *supra*, intended to make the immunity provisions of §46, Interstate Commerce Act (Title 49, U.S.C.) [*infra*, p. 33], applicable to grand jury investigations under the Motor Carriers Act.

b. Whether, assuming *arguendo*, that some immunity was conferred upon petitioner by §305(d), *supra*, it is co-extensive with his privilege against self-incrimination and, therefore, constitutionally sufficient to eliminate that privilege.

2. Whether the procedure which resulted in petitioner's conviction of criminal contempt, pursuant to subdivision (a) of Rule 42, Federal Rules of Criminal Procedure [*infra*, p. 37], for refusing in the presence of the Court and the grand jury to answer certain questions previously put to him before the grand jury, was valid and proper.

a. Whether petitioner after the direction of the District Court to answer certain questions had re-

appeared before the grand jury and refused again to answer the questions, was entitled, under subdivision (b) [*infra*, p. 37] of Rule 42, Federal Rules of Criminal Procedure, the requirements of Due Process and the fundamental fairness requisite in Federal criminal proceedings, to notice, reasonable time for preparation and a statement of the criminal contempt charged.

b. Whether, after petitioner returned to the grand jury pursuant to the District Court's order and refused again to answer the questions directed to be answered and was once more brought before the Court, the Court could validly ignore Rule 42(b) [*infra*, p. 37] Federal Rules of Criminal Procedure and refuse to afford petitioner notice, specification of charges, and reasonable time for preparation and compel petitioner to take the stand and testify and, upon petitioner's refusal to answer and his statement that he would refuse again to answer, if returned to the grand jury, convict petitioner of criminal contempt pursuant to Rule 42(a) [*infra*, p. 37] as for a contempt committed in the presence of the Court.

c. Whether the secrecy of the proceedings violated the requirement that a contempt judgment be public.

3. Whether the sentence of fifteen months imposed upon petitioner constituted cruel and unusual punishment or an abuse of the District Court's discretion.

Whether in this criminal contempt proceeding the Court could impose a coercive sentence.

## Constitutional Provisions, Statutes and Regulations Involved

The constitutional provisions, statutes and regulations involved, are set forth in the appendix to this brief. Their citations follow: *United States Constitution*, Amendments V, VI, VIII [*infra*, p. 42]; *Motor Carriers Act*, Title 49, U.S.C., §§305(d) [*infra*, p. 33], 322 [*infra*, p. 41]; *Interstate Commerce Act*, Title 49, U.S.C. §46 [*infra*, p. 33]; *Federal Rules of Criminal Procedure*, Rules 42(a), 42(b) [*infra*, p. 37].

## Statement of the Case

Petitioner is a principal of Young Tempo, Inc., a New York City dress manufacturer (R. 8). T. and R. Trucking Company has transported dresses for Young Tempo, Inc. and Acme Dress Company between New York and Midvale, New Jersey (R. 8, 9). The actual owner of the trucker (according to the Government's information) is John Dioguardi, although Theodore Rij is the nominal proprietor (R. 9).

Active in the Southern District of New York are grand juries conducting a general racketeering investigation and an inquiry into the Victor Riesel obstruction of justice case (R. 46, 47). The subjects of these investigations are Dioguardi, Rij (also known as Ray) and possibly others (R. 47). The Government here and in the other investigations sought to show petitioner's associations with these persons (R. 47).

Prior to this matter petitioner pursuant to subpoena appeared at least eleven times before two of these other grand juries (R. 10, 26). Petitioner's first appearance related to the Riesel obstruction of justice case and the

location of Rij (R. 26). Petitioner's subsequent appearances were before a jury investigating alleged garment trucking racketeering (R. 26).

At the time hereof, petitioner was still subject to the earlier subpoenas (R. 26), his further appearance thereunder having been adjourned.

Before the other juries, petitioner mainly claimed his privilege against self-incrimination, but, concededly, his testimony there "went part way into the area" with which the instant proceedings are concerned (R. 27, 28).

Before the other grand juries, petitioner, and business associates were told by the same prosecutor as here that petitioner was to be indicted for violation of the Internal Revenue laws (R. 28).

In March 1957, petitioner's counsel was told by this prosecutor that an investigation under the Interstate Commerce Act was about to be instituted, that petitioner would be subpoenaed to appear before the Grand Jury, that the immunity provision contained in §46, Title 49, U.S.C. [*infra*, p. 33], would apply and that the Fifth Amendment plea could not be interposed (R. 9, 10).

Thereafter petitioner appeared before the April, 1957 grand jury pursuant to a subpoena requiring him to appear and "testify . . . in regard to an alleged violation of Sections 309, 322, Title 49 United States Code" (R. 17-19). Petitioner's counsel was present in the anteroom of the Grand Jury room. Petitioner was advised that "the foreman . . . will . . . allow you to consult with your attorney if you feel you desire to do so" (R. 17-19).

Petitioner was asked (R. 19): "Mr. Brown, are you associated with Young Tempo, Incorporated?"

Petitioner received permission to speak with his attorney (R. 19). After such consultation, petitioner returned

to the grand jury and the question was read to him again. He refused to answer because of possible self-incrimination (R. 19).

The prosecutor then advised (R. 19; 20) petitioner "that this Grand Jury is conducting an investigation for possible violations of the Interstate Commerce laws, \* \* \* and that under Title 49 United States Code, Section 305(d), the Congress \* \* \* has provided that any witness \* \* \* compelled to give testimony as to any matter arising under the Motor Carrier Section \* \* \* shall by virtue of his testimony be given immunity from federal prosecution as to any crime which might arise out of the subject matter of his testimony" and that he did "not have any privilege to plead the Fifth Amendment as to the questions which are going to be put to" him before this Grand Jury.

Petitioner conferred again with counsel, returned to the grand jury room and refused once more to answer the question on the ground of possible self-incrimination (R. 20, 21). Petitioner was then informed (R. 21) that, if he did not answer this question, he could "be brought before a Judge of this Court and directed to answer this and other questions". Once more petitioner consulted with counsel, the same question was again put to him and he refused to answer on the ground of possible self-incrimination (R. 21, 22).

Thereafter five more questions were asked of petitioner before the grand jury. Petitioner refused to answer all on the ground of possible self-incrimination (R. 22, 23).

The questions which petitioner refused to answer are:  
 1. Mr. Brown, are you associated with Young Tempo, Incorporated (R. 21)? 2. Mr. Brown, does Young Tempo, Incorporated, use a trucking company known as the T &

R Cutting Company or as the T & R Trucking Company (R. 22)? 3. Mr. Brown, who do you know to be the owner or owners or the principal in interest or principals in interest of the T & R Cutting or the T & R Trucking Company (R. 22)? 4. Mr. Brown, are you associated with the Acme Dress Company, in Midvale, New Jersey (R. 22)? 5. Mr. Brown, does the T & R Trucking Company provide trucking services between Young Tempo, Incorporated, in New York City and the Acme Dress Company in Midvale, New Jersey (R. 23)? 6. Mr. Brown, do you know if the T & R Trucking Company or the T & R Cutting Company has applied for or obtained a permit from the Interstate Commerce Commission to operate as a contract trucker between New York, New York, and Midvale, New Jersey (R. 23)?

After petitioner's refusal to answer these questions, the grand jury, the prosecutor, petitioner and counsel proceeded to District Judge Levet's courtroom.

At the Court's request, the prosecutor outlined the procedure requested by the Government to be followed (R. 6-8). The courtroom was cleared (R. 6) and the proceedings throughout were private.

The prosecutor stated that the grand jury requested the Court's aid and assistance in a direction to petitioner to answer the questions (R. 6-8).

Outlining the procedure requested, the prosecutor stated that at the termination of that hearing "if the Court determines that the witness in fact must answer the questions, that the Court direct him to answer the questions" and that "at that point it would be the Government's intention to have the Grand Jury and the witness return to the grand jury room, at which point the same questions would be put to the witness" (R. 7, 8).

Upon further refusal by petitioner to answer on his return to the grand jury room, the prosecutor said (R. 8), petitioner would be returned to the Court with a second request that the same questions be put to him and, if he then refused to answer, "the Government would ask that he be held summarily in contempt according to the procedure of Rule 42(a) \* \* \*, and for a violation of Section 401, Subdivision 3 (18 U.S.C.) which makes punishable as contempt the disobedience of a lawful order of the Court."

The prosecutor also stated (R. 8, 9) the general nature of the inquiry to be "that contrary to the law this T & R Trucking Company neither applied for nor received a permit from the Interstate Commerce Commission to operate as a contract trucker between New York, New York, and Midvale, New Jersey."

At this point petitioner's counsel reminded (R. 9) the Court that in his off-the-record discussion of procedure the prosecutor had said "that the Government's position was that this was the only hearing" petitioner was "entitled to", and applied for a reasonable adjournment and "a notice from the Government of the specifications or charges for which we are having this hearing so that we can prepare for this hearing and be able to properly represent our client", which requests were denied. The existence of issues of fact was indicated to the Court by petitioner's counsel (R. 10, 11).

After argument (R. 11-17) on the applicability of the immunity sections of the Motor Carriers Act, §305(d) [*infra*, p. 33], the Government called (R. 17) the grand jury stenographer as a witness. She read her untranscribed minutes of the grand jury proceedings (R. 17-23). When she finished, an adjournment was requested by petitioner's attorney, but was not granted (R. 24).

Argument was then had on the issues raised by petitioner's appearance before other Grand Juries, and on other issues involved and on the incriminatory nature of the questions put to petitioner (R. 25-34).

This part of the proceedings occurred on Friday, April 5th, 1957. The Court directed the parties to return on Monday, April 8th, at 2:00 P.M. (R. 34).

On April 8th, the Court (R. 34, 35) " \* \* \* determined that the witness must testify as to the questions \* \* \* propounded \* \* \* that \* \* \* Sections 305(d), Title 49 and Section 46 of Title 49 adequately provide for immunity in the instances involved \* \* \* that the immunity applies to a grand jury \* \* \* that the immunity applies in the State Courts \* \* \* " and that the "immunity exists even though no privilege is claimed \* \* \* and under the Rules of Criminal Procedure \* \* \* the witness must answer \* \* \* ".

The Court also said (R. 36): "I do not think the fact that this witness has testified before other grand juries affects this situation \* \* \* He is immune from prosecution for all matters on which he is questioned before this grand jury \* \* \* ".

The Court then directed the grand jury to retire (R. 35, 36). Counsel for petitioner requested an adjournment to consult with his client (R. 35). A postponement for thirty minutes was granted (R. 35).

Petitioner, pursuant to the Court's direction, returned to the grand jury room and the six questions ordered to be answered were again put to him (R. 37-39).

Petitioner refused to answer on the ground of possible self-incrimination (R. 38, 39). The grand jury, petitioner and all counsel then proceeded again to Judge Levet's courtroom (R. 36, 37).

At that time the prosecutor stated to the Judge that the grand jury "again wishes to request the aid and assistance of the Court with reference to" petitioner (R. 36). Discussion was then had again as to the nature of this proceeding (R. 36, 37).

The prosecutor said: "At this point the grand jury is still merely requesting the assistance of the Court. What the Government would request is that if it appears, \* \* \* that the witness is persisting in his refusal \* \* \* the Court itself, in the presence of the grand jury, will put the six questions to the witness and ask him, first, whether he is willing to answer them now, and, second, would he answer them if he were sent back to the grand jury again. And if the witness again refuses here and now in the physical presence of the Court or persists in his refusal to answer, that the witness be held in summary contempt under Rule 42(a) [*infra*, p. 37] of the Federal Rules of Criminal Procedure" (R. 36, 37).

And the Court stated "That is what I propose" (R. 37).

Petitioner's counsel excepted to this procedure and requested compliance with Rule 42(b) [*infra*, p. 37], notice of the charges and specifications and an opportunity for a full hearing (R. 37). The public was excluded.

This request and objection were overruled (R. 37). The grand jury stenographer was then called and read his untranscribed minutes which disclosed petitioner's refusal before the jury to answer the questions set forth above because of possible self-incrimination (R. 37-39).

The Court, over objection and exception, directed petitioner to take the stand in the courtroom (R. 40).

Petitioner's counsel also objected on the ground that petitioner was being compelled in a criminal cause to be a witness against himself, which objection was overruled (R. 40).

The Court did not swear petitioner, but deemed him to be under oath, since he had been sworn before the grand jury. The Court's theory was that this was "a continuance of the Grand Jury proceeding before the Court". Petitioner's counsel took further exception and objection to this proceeding (R. 40).

The Court then put to petitioner the same six questions. Petitioner's counsel made specific objection to each question. Petitioner refused to answer each question on the ground of possible self-incrimination (R. 41, 42).

The Court, repeating each question directed the petitioner to answer, which interrogation and directions were done over the objection of petitioner's counsel (R. 43, 44). To each question and direction petitioner maintained his refusal to answer on the ground of possible self-incrimination (R. 43, 44).

At the Government's request the Court, over objection, then asked petitioner "whether he would maintain his refusal to answer, if he returned to the grand jury room", to which petitioner answered in the affirmative (R. 44).

Petitioner was then asked, over counsel's objection, whether he believed that these answers would incriminate him in any way and petitioner refused to answer (R. 44, 45).

The Court then stated that by reason of petitioner's "refusal to answer in the actual presence of this Court, I am forced to act upon this matter". Petitioner's counsel objected to the whole proceeding and again asked for notice and specifications and an opportunity to be heard, which objection and request were overruled (R. 45).

---

a. The Court of Appeals (R. 62) considered that it was "merely a proceeding ancillary to the grand jury investigation and not a criminal proceeding".

The Court then permitted counsel to argue as to why an adjudication of contempt should not be made (R. 46, 47).

Petitioner's counsel argued, *inter alia*, that the purported immunity did not exist, that petitioner should have a full hearing on the issues of fact involved herein, that the whole procedure was bad and objectionable on the ground that, irrespective of the question of immunity, petitioner's constitutional rights in a criminal cause were seriously infringed by his being compelled to take the stand and being sworn and being asked questions, that in this proceeding, entirely separate and apart from the grand jury proceedings, it was wrong to ask petitioner whether he believed that answering the questions would incriminate him and that the failure to give petitioner notice and an opportunity to defend was in violation of due process and of petitioner's rights under the Constitution and that the proceeding was being used by the United States Attorney as a device or subterfuge or artifice to circumvent petitioner's constitutional rights (R. 46, 47).

The Court nonetheless adjudicated petitioner in contempt (R. 47).

Government counsel was then heard by the Court on the question of sentence and in that regard he said, among other things, the following (R. 47-49):

"For these reasons \* \* \*, the Government here would ask for a substantial sentence, and that is done not so much for any punitive effect as it would be for the coercive effect of the sentence.

Under the statute there is no maximum penalty upon the sentence that your Honor may impose. The only maximum is that imposed by the Constitution against cruel and unusual punishment.

I would further ask \* \* \* that \* \* \* your Honor not include a purge clause. \* \* \*"

Following this request by the United States Attorney for a coercive sentence, the Court sentenced petitioner to be confined for a period of one year and three months (R. 49).

## ARGUMENT

### POINT I

**Congress in §305(d), Motor Carriers Act did not intend to make the immunity provisions of §46, Interstate Commerce Act, applicable to Grand Jury investigations of offenses under the Motor Carriers Act. Consequently Petitioner could not receive immunity and was entitled to refuse to answer the questions because of possible self-incrimination.**

The subpoena served upon petitioner directed him to appear before the April Grand Jury to testify in an investigation of possible violations of §§309 and 322 [*infra*, p. 41] of the Motor Carriers Act.

On his appearance before the Grand Jury and before the Court, petitioner refused to answer certain concededly incriminatory questions on the ground that the answers might tend to incriminate him.

Consequently we have here a valid claim of privilege, except for the claimed applicability of an immunity provision.

The Motor Carriers Act does not have a separate immunity provision. Congress in §305(d) [*infra*, p. 33] incorporated by reference the immunity provision contained in §46 [*infra*, p. 33] of the Interstate Commerce Act.

To determine whether a witness may obtain immunity before a specific body, it is necessary always to ascertain whether the particular immunity statute by its terms applies to that tribunal or officer—here a grand jury.<sup>1</sup>

The statute here involved §305(d) [*infra*, p. 33], Motor Carriers Act, first provides for the Commission's power to administer the Act and to require by subpoena the attendance and testimony of witnesses and the production of books and documents and to take testimony by deposition.

This grant of power contained in the first clause of §305(d) is then modified by the language "relating to any matter under investigation, as the commission has in a matter arising under Chapter 1 of this title [Title 49, U.S.C.]."

Following this modifying phrase is a semi-colon and a second clause is then set forth which reads "and any person subpoenaed or testifying in connection with any matter under investigation under this chapter shall have the same . . . immunities . . . as though such matter arose under Chapter 1 of this title, unless otherwise provided in this chapter."

In statutory construction, this Court has held, "punctuation marks are no part of an act" and "to determine the intent of the law, the court . . . will disregard the punctuation" (*U. S. v. Shreveport Grain & E. Co.*, 287 U. S. 77, 82, 83). Consequently, the whole of §305(d) [*infra*, p. 33] must be read together.

---

1. See *Blaine v. United States*, 29 F. 2d 651 (C.A. 5); *Matter of Doyle*, 257 N.Y. 244; *State v. Nolan*, 231 Minn., 522, 44 N.W. 2d 66; *State v. Gensmer*, 235 Minn. 72, 51 N.W. 2d 680; *Koonck v. Cooney*, 244 Iowa 153, 55 N.W. 2d 268; *Ex parte Andrews*, 51 Tex. Cr. R. 79, 100 S.W. 376. See also *Hebebrand v. State*, 129 Ohio St. 574, 196 N.E. 412.

When read together the whole sentence of §305(d) shows that Congress was concerned with and describing the powers of the Commission to obtain testimony and evidence for its enforcement and administration of the Motor Carriers Act, and that it intended to give as broad as possible scope to the Commission's investigatory powers, but no more.

In the first clause of §305(d) the Commission's power to take testimony and to compel the production of papers relates "to any matter under investigation". Then in the second clause the grant of immunity is limited to "any person subpoenaed or testifying in connection with any matter under investigation under this chapter." Necessarily the re-use of the words "in connection with any matter under investigation under this chapter" discloses an intent by Congress to relate back to the prior use of the words "any matter under investigation" in the first clause of §305(d) and, therefore, to limit the immunity to the Commission's investigations and not to extend the immunity to investigations by grand jury or other bodies.

It is a necessary implication in the second clause of §305(d) after the phrase "any matter under investigation" that the words "by the Commission" be inserted. Congress having used these words before in the same sentence and having limited those provisions to the Commission, obviously, as a matter of draftsmanship, did not deem it necessary to repeat the words "by the Commission"; as ordinary rules of statutory construction would necessarily require their implication.

The language of §305(d) in effect displaced and excised from §46 [*infra*, p. 33] of the Interstate Commerce Act as made applicable to the Motor Carriers Act the words "testifying \* \* \* in any cause or proceed-

ing criminal or otherwise based upon, or growing out of any alleged violation of Chapter 1". Congress thereby eliminated the grand jury as a body before whom immunity could be obtained in an investigation under the Motor Carriers Act.

If Congress had intended the immunity to extend to grand jury proceedings and proceedings other than the Commission it certainly knew "the phraseology necessary to reach this result" *Matter of Doyle*, 257 N.Y. 244, 268, 269).

The words of art necessary and most often used for the purpose of extending the immunity to grand jury or court proceedings are "in any proceeding" or "in any suit or proceeding" or "in any cause or proceeding, criminal or otherwise" or "in any action or proceeding" or "in any cause of proceeding instituted by the Commission" or "in any proceeding, suit or prosecution". See *Federal Communications Act*, Title 47, U.S.C., §409(l) [*infra*, p. 50]; *Civil Aeronautics Act*, Title 49, U.S.C., §644(i) [*infra*, p. 45]; *Second War Powers Act* (1946), Title 50 U.S.C., App. §643a [*infra*, p. 47]; *War and Defense Contracts Acts* (1946), Title 50 U.S.C., App., §1152(a)(4) [*infra*, p. 47]; *Shipping Act of 1916*, Title 46, U.S.C., §827 [*infra*, p. 49]; *Industrial Alcohol Act*, Title 26, U.S.C. (1946 ed.), §3119, now §5315, Title 26, U.S.C. [*infra*, p. 45]; *Securities Act of 1933*, Title 15, U.S.C., §77v(c) [*infra*, p. 35]; *Securities Exchange Act*, Title 15, U.S.C., §78u(d) [*infra*, p. 49]; *Public Utility Holding Company Act*, Title 15, U.S.C., §79r(e) [*infra*, p. 48]; *Natural Gas Act*, Title 15, U.S.C., §717m(h) [*infra*, p. 50]; *Investment Advisers Act*, Title 15, U.S.C., §80b-9(d) [*infra*, p. 47]; *Investment Companies Act*, Title 15, U.S.C., §80a-41(d) [*infra*, p. 48].

Actually, the inclusion of the words "before the Commission" is not necessary to limit immunity to testimony before the Commission, but the use of the phraseology "in any cause or proceeding" or other similar language is required to extend the immunity power to grand juries or court proceedings; these words or words of similar import having been held by this Court in *Hale v. Henkel*, 201 U. S. 43, 66 (1906), to extend immunity to grand jury and court proceedings.

Here the use in §305(d), Motor Carriers Act, of the language "testifying in connection with any matter under investigation under this chapter" operated to delete the language "any cause or proceeding, criminal or otherwise" from §46 as incorporated into §305(d) and prevented the immunity provisions from extending to grand jury proceedings.

The enactment by Congress of an immunity provision limited to proceedings by a Commission and insufficient to extend to Grand Jury investigations, is not novel. See *Federal Trade Commission Act*, Title 15, U.S.C.A., Ch. 2, §49 [*infra*, p. 34]; *Taft-Hartley Act*, Title 29, U.S.C., §161 (3) [*infra*, p. 36]; *Merchant Marine Act*, 1936, Title 46, U.S.C., §1124(c) [*infra*, p. 35]; *Perishable Commodities Act*, Title 7, U.S.C., §499m(f) [*infra*, p. 36]; *China Trade Act*, Title 15, U.S.C., §155(a), (c) [*infra*, p. 38]; *Atomic Energy Act*, Title 42, U.S.C., §2201(c) [*infra*, p. 39]; and the *Social Security Act*, Title 42, U.S.C., §405(d), (f) [*infra*, p. 39].

It should be noted that §305(d), Motor Carriers Act, is not alone in incorporating by reference §46 of the Interstate Commerce Act and not extending the immunity power beyond the particular administrative officer or board involved. See *Commodity Exchange Act*,

Title 7, U.S.C. (1946 ed.), §15 [*infra*, p. 42]; *Emergency Price Control Act*, 56 Stat. 30 (1942), §202 [*infra*, p. 43]; and the *Rent Control Act*, Title 50, App., U.S.C., §1896 (f) (1), (3), (6) [*infra*, p. 40]. See also *Export Controls Act*, Title 50, U.S.C., App., §2026(a), (b) [*infra*, p. 45].<sup>2</sup>

Illustrative of the converse of the situation confronting the petitioner here is *Blaine v. United States*, 29 F. 2d 651 (C.A., 5). *The National Prohibition Act* provided in §47, 27 U.S.C.A. (1927 ed.) that "no person shall be excused, on the ground that it may tend to incriminate him \* \* \* from \* \* \* testifying \* \* \* in obedience to a subpoena of any court in any suit or proceedings based upon or growing out of any alleged violation of this chapter."

In the *Blaine* case, *supra*, a defendant claimed immunity under this provision of the National Prohibition Act, on the ground that he gave evidence at a revocation hearing conducted by the Prohibition Administrator. The Court of Appeals held that he had not brought himself within the terms laid down by the statute "for the reason that he did not testify in obedience to the subpoena of any court". *Sherwin v. United States*, 268 U. S. 369.

Accordingly, since petitioner was before a Grand Jury, §305(d) did not and could not confer any immunity upon him and he properly invoked his privilege against self-incrimination, as he, concededly, had the right to do in the absence of any immunity provision.

2. In the *Narcotics Control Act*, Title 18, U.S.C., §1406 [*infra*, p. 49], the *Immunity Act of 1954*, Title 18, U.S.C., §3486(c) [*infra*, p. 43] and the *Defense Production Act of 1950*, Title 50, U.S.C., App., §2155(a), (b) [*infra*, p. 46], Congress specifically mentioned the grand jury as a body before which immunity may be obtained. In the *Federal Deposit Insurance Corporation Law*, Title 12 U.S.C., §1820(c), (d) [*infra*, p. 44], while the Board of Directors may apply to a judge or clerk of any United States Court for a subpoena, the immunity power extends only to a hearing, examination or investigation by the Board.

And the direction of the District Court that petitioner answer based upon its finding of immunity, was not a lawful order and petitioner's refusal to comply with the Court's direction could not constitute contempt.

## POINT II

**Assuming that immunity was conferred upon Petitioner by §305(d), Motor Carriers Act, this immunity was not co-extensive with his constitutional privilege against self-incrimination.**

Even if the Courts below were assumed to be correct in holding that §305(d), Motor Carriers Act [*infra*, p. 33] incorporated §46, Interstate Commerce Act [*infra*, p. 33] *in toto*, the question necessarily arises whether the immunity attempted to be provided is constitutionally sufficient, that is, is it co-extensive with petitioner's constitutional privilege against self-incrimination. *Counselman v. Hitchcock*, 142 U. S. 547.

§305(d) commences "so far as may be necessary for the purposes of this chapter". This language limits the proffered immunity and makes it futile and worthless.

If, for example, the Government before the grand jury went beyond the concededly incriminatory questions put to petitioner (which we assume *arguendo* to be relevant to an investigation under the Motor Carriers Act) and inquired as to matters outside the scope of such an investigation, such as possible Internal Revenue violations and other offenses, would it not be possible for the Government then to contend that all that was done before

the grand jury which was necessary for the purposes of the Motor Carriers Act were the questions now asked of the petitioner and that all the other inquiries were not necessary and that consequently the immunity did not apply?

If the Government were correct in such an argument, then petitioner, deprived of his privilege by this immunity provision, would be liable to prosecution based on his own testimony, if the same were incriminatory.

Petitioner would also, if this possible Government argument as to the limitation on the immunity provision were upheld, be in this position—having been asked concededly incriminatory questions at the very outset of the investigation and having, let us suppose, failed, *in limine* (contrary to his action) to claim his privilege—he would be deemed to have waived the privilege and would then be liable in contempt for failing to answer in the other fields of investigation or to indictment on the crimes, if any, disclosed by his testimony other than on matters under the Motor Carriers Act. *Cf., U. S. v. Price*, 96 Fed. 960 (D. Ky.).

Even if petitioner in answering the questions involved here touched incidentally upon other crimes, it would be open to the Government to argue that such testimony was not necessary for the purposes of the Motor Carriers Act.

Consequently, it is submitted, the immunity purported to be granted by §305(d) is not co-extensive with the privilege.

The purported immunity is not co-extensive with his privilege against self-incrimination for the further reason that petitioner has been before two other grand juries in the Southern District of New York (R 26, 27). There he was told by the prosecutor that he is a prospective defend-

ant (R. 28). Petitioner continues under subpoena to appear before the grand juries.

In this situation the Government in its investigation of possible violations of the Motor Carriers Act may develop clues and leads which will furnish it with evidence for use before the other grand juries to incriminate petitioner and cause his indictment and prosecution.

Consequently, under §305(d) despite the language of §46; Title 49, U.S.C., petitioner's situation is markedly similar to that of the witness in *Counselman v. Hitchcock*, *supra*, where this Court said at page 564:

"It remains to consider whether §860 of the Revised Statutes removes the protection of the constitutional privilege of Counselman. \* \* \* It could not, and would not, prevent the use of his testimony to search out other testimony to be used in evidence against him or his property, in a criminal proceeding in such court. It could not prevent the obtaining and the use of witnesses and evidence which should be attributable directly to the testimony he might give under compulsion, and on which he might be convicted, when otherwise, and if he had refused to answer, he could not possibly have been convicted.

"The constitutional provision distinctly declares that a person shall not 'be compelled in any criminal case to be a witness against himself;' and the protection of §860 is not co-extensive with the constitutional provision."

Here, moreover, petitioner is under direct notice from the prosecutor that he is a prospective defendant in other grand jury proceedings. Yet he is being compelled to testify without the protection of his privilege against self-

incrimination. He faces real jeopardy and therefore the purported immunity is not co-extensive with the privilege.<sup>3</sup>

Since the proffered immunity under §305(d), Motor Carriers Act, is not co-extensive with the privilege against self-incrimination, petitioner had a valid right to claim the privilege and could not be held in contempt for doing so.

### POINT III

**The District Court proceedings deprived Petitioner of his rights under Rule 42(b) of Criminal Procedure and the constitutional requirements of Due Process and the fundamental fairness required in Federal criminal proceedings. Petitioner was compelled to testify against himself in a criminal proceeding. The fundamental safeguards due the defendant in a criminal cause were not accorded Petitioner.**

This case presents for review the validity of the proceedings in the Second Circuit for the handling of recalcitrant grand jury witnesses before grand juries. *Cf., U. S. v. Curcio*, 234 F. 2d 470, reversed 354 U. S. 118.

The procedure followed here by the District Court and approved by the Court of Appeals is, it is respectfully

3. Nor was petitioner permitted the opportunity to obtain the minutes of his other grand jury appearances to show the real danger and the substantial relationship. Nor did the District Court examine these minutes. *Cf., Youngdahl, J., in U. S. v. Onassis*, 125 F. Supp. 190. The failure to do either deprived petitioner of his opportunity to defend and vitiated the proceedings. *U. S. v. Andolschek*, 142 F. 2d 503; *U. S. v. Zwillman*, 108 F. 2d 802.



submitted, violative of Due Process and the fundamental rights of defendants in criminal cases.<sup>4</sup>

Moreover, this procedure followed in the Second Circuit has the effect of nullifying subdivision (b) of Rule 42 of the Rules of Criminal Procedure insofar as applicable to recalcitrant grand jury witnesses.

#### **A. Rights Of A Recalcitrant Grand Jury Witness.**

The rights of a witness claimed to be recalcitrant before a grand jury have been well established.

Rule 42(b) of the Rules of Criminal Procedure [*infra*, p. 37] requires that criminal contempts shall be prosecuted on notice, stating the place and time of hearing and the essential facts constituting the criminal contempt charge and allowing a reasonable time for the preparation of the defense.

Rule 42(b) is, of course, only the application to criminal contempts of the requirements of due process contained in the Fifth Amendment to the Constitution and the fundamental fairness required to be a necessary attribute of Federal criminal procedure.

But the rights of a party to a criminal contempt proceeding go beyond mere notice, opportunity to prepare and hearing. The safeguards surrounding criminal prosecutions must be afforded to the party.<sup>5</sup> *Cammer v. U.S.*, 350 U.S. 399, 403; *Re Michael*, 326 U.S. 224; *Nye*

---

4. The procedure here followed is in direct conflict with the holding of the First Circuit Court of Appeals in *Carlson v. U.S.*, 209 F. 2d 209, and of the Court of Appeals for the District of Columbia in *Wong Gim Ying v. U.S.*, 231 F. 2d 776, 779, 780 [see also *Powell v. U.S.*, 226 F. 2d 269 (App. D.C.)] and in conflict with the decision of this Court in *Ex Parte Savin*, 131 U.S. 267, 277.

5. "Since a charge of criminal contempt is essentially an accusation of crime, all the constitutional safeguards available to an accused in a criminal trial should be extended to prosecutions for such contempt." Frankfurter and Greene, *The Labor Injunction*, 226.

v. U.S., 313 U.S. 33. Otherwise "too great inroads on the procedural safeguards of the Bill of Rights" would be permitted. *Re Michael, supra*, 227.

As pointed out in *Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 444:

"\* \* \* it is certain that in proceedings for criminal contempt the defendant is presumed to be innocent, he must be proved to be guilty beyond a reasonable doubt and cannot be compelled to testify against himself."

Measured against these basic requirements of a proceeding in criminal contempt, namely notice, opportunity to prepare, hearing, presumption of innocence, proof of guilt beyond a reasonable doubt and freedom from compulsion to testify, the proceedings in this case and in other similar cases in the Second Circuit fall far short and obviously constitute merely a putatively clever device to circumvent these principles and to deprive the witness of his rights. *Cf. Matusow v. United States*, 229 F. 2d 335 (C.A. 5).

The procedure here and in other such proceedings in the Second Circuit are so contrived that the commission of the alleged contempt and the adjudication is one interrelated action.

The sudden and almost miraculous transmutation of a proceeding (described not as a hearing but merely an attempt to obtain the assistance of the Court) into a criminal contempt done in the presence of the Court (although actually done, if at all, in the grand jury room) which is the hallmark of this type of proceedings in the Second Circuit enables the Government to debase the fundamental rights of parties which adhere to any criminal proceeding including one for criminal contempt.

The claim that the proceeding is merely an attempt to secure the assistance of the Court in obtaining the testi-

mony of petitioner is self-evidently spurious. Is it not clear that, from the time that the petitioner first appeared before the Court at the direction of the grand jury until the time when the Court finally directed him, question by question, to answer, the petitioner was in jeopardy and faced, in view of the announced purpose of these proceedings in the Second Circuit and their characteristic endings, a finding of criminal contempt purportedly committed in the presence of the Court and, hence, he was put on the defense of his claimed right not to answer these questions and of his conduct?

It is no answer to say that petitioner had a hearing, in that the Court listened to his counsel's arguments, when he was not permitted to make any defense on the issues of fact existent in the matter and his presumption of innocence was abrogated and he was compelled to take the stand.

Besides it was, if a hearing, held before the offense, if any, was committed—certainly a novel doctrine.

#### **B. Correct Procedure In Grand Jury Contempts.**

The correct procedure in the situation presented here is well set forth in *Carlson v. U. S.*, 209 F. 209, 216 (C. A., 1) and *Wong Gim Ying v. U. S.*, 231 F. 2d 776, 779, 780. These cases rest firmly upon the foundation of *Ex Parte Savin*, 131 U. S. 267 and *Cooke v. United States*, 267 U. S. 517.

In the *Carlson* case the Court described the proper procedure, as follows: If the witness is recalcitrant on the ground of his claim of possible self-incrimination, he is to be brought before the Court which is to rule on the availability of the claim of privilege; if the privilege is overruled by the Court, it "would then normally instruct the witness to go back to the grand jury and answer the question. If the witness then and there, in the face of the

Court, declined to do so, this is disobedience to a lawful order of the Court \* \* \* ; and since this disobedience occurs in the 'actual presence' of the Judge it may be punished summarily under Rule 42(a)."

Hence, according to the *Carlson* case, if at this point the witness *refuses to return* to the grand jury room and answer the questions, it is his *refusal to return*, which is a contempt committed in the presence of the Court and punishable summarily.

But, if the witness returns to the grand jury room the First Circuit said in *Carlson* at page 216:

"\* \* \* and there again refuses to answer the question which the court directed him to answer, this is still disobedience of a lawful order of the court \* \* \*. But because such disobedience did not take place in the actual presence of the court, and thus could be made known to the court only by the taking of evidence, the court would have to conduct the proceeding in criminal contempt in accordance with Rule 42(b)."

It is at this point that Second Circuit proceedings branch off from the proceedings outlined in the *Carlson* case as proper and proceed post-haste to the deprivation of the witness' fundamental rights.

In the *Carlson* case, it was made clear that, at this point, if the witness still claimed his privilege, it was not a criminal contempt proceeding and the "worst that could happen, if the ruling is against him (the witness), is that he would be given a second chance to go before the grand jury and answer the questions." *Cf., Powell v. U. S.*, 226 F. 2d 269.

If, on the other hand, he is being charged with misconduct in the jury room, constituting misbehavior in the presence of the Court, the Court in *Carlson* said that "this charge must be prosecuted on notice, and under Rule 42(b) the notice 'shall state the essential facts constituting the criminal contempt charged and describe it as such'".

Then specifically directing itself to a situation exactly opposite to that presented by this case, the Court said at page 216:

"If the charge of criminal contempt is that the witness declined to answer the questions upon the pretended ground that the answers would tend to incriminate him, this claim of privilege being advanced in bad faith, then (assuming that such conduct might be deemed misbehavior in the presence of the court within the meaning of 18 U.S.C. §401(1) the required notice under Rule 42(b) would have to describe the alleged misbehaviors in order that the witness, in preparing his defense to the charge, may direct his evidence to the issue of his good faith in claiming the privilege."

It is respectfully submitted that this procedure outlined in the *Carlson* case is obligatory in a proceeding such as presented by this case and because not followed the proceedings here are vitiated.

Especially applicable here is the language of this Court in *Re Oliver*, 333 U. S. 257, 275:

"Except for a narrowly limited category of contempts, due process of law as explained in the *Cooke* case [337 U. S. 517] requires that one charged with contempt of court be advised of the charges against him, have a reasonable opportunity to meet them by way of defense or explanation, have the right to be represented by counsel, and have a chance to testify and call other witnesses in his behalf, either by way of defense or explanation. The narrow exception to these due process requirements includes only charges of misconduct, in open court, in the presence of the judge, which disturbs the court's business, where all of the essential elements of the misconduct are under the eye of the court, are actually observed by the court, and where immediate punishment is essential to prevent 'demoralization of the court's authority' before the public".

And in the *Oliver* case this Court said that "the right to be heard in open court before one is condemned is too valuable to be whittled away under the guise of 'demoralization of the Court's authority'." 333 U. S. 257, 278.

Because of the existence of Rule 42(b) it is quite clear that Rule 42(a) can only apply to acts actually done in the presence of the Court which tend to demoralize the Court's authority before the public. Since, however, the refusal of the witness to testify before a grand jury occurs in its room, what reason can there be to invoke Rule 42(a) in the manner followed here other than to circumvent Rule 42(b) and to do indirectly what cannot be done directly? *Wong Gim Ying v. U. S., supra*.

Thus a strange procedure has been established in which a witness is compelled to commit the allegedly wrongful act again in the presence of the Court so that his rights and privileges can be avoided.

The conflict between the decision here and those of other Courts of Appeal and with decisions of this Court is clear. Moreover there has been such a departure here from the usual course of judicial proceedings, as to call for the exercise of this Court's power of supervision.

### **C. Petitioner Could Not Be Compelled To Take The Stand.**

The Court of Appeals held that the District Court had the right to compel petitioner to take the stand and to answer questions. It specifically held that the proceeding was not a criminal proceeding but merely one which was "ancillary to the grand jury investigation".

The Court of Appeals also held that to prevent the District Court "from inquiring of the witness whether he is willing to answer questions, would frustrate the proper operations of the grand jury \* \* \*" and that the "Court is merely being advised as to what had already happened before the grand jury". This latter holding of the Court

of Appeals is directly contrary to the holding of this Court in *Ex Parte Savin*, 131 U. S. 267, 277, where Mr. Justice Harlan said:

"It is true that the mode of proceeding for contempt is not the same in every case of such misbehavior. Where the contempt is committed directly under the eye or within the view of the court, it may proceed 'upon its own knowledge of the facts, and punish the offender, without further proof, and without issue or trial in any form' \* \* \*; whereas, in cases of misbehavior of which the Judge cannot have such personal knowledge, and is informed thereof only by the confession of the party, or by the testimony under oath of others, the proper practice is, by rule or other process, to require the offender to appear and show cause why he should not be punished."

Here the District Court knew of the contempt only through the confession of the petitioner obtained in violation of his fundamental rights in a criminal case<sup>6</sup> not to take the stand and testify and through the testimony of others, namely, the Grand Jury stenographer. Under *Ex Parte Savin*, *supra*, and Rule 42(b) of the Rules of Criminal Procedure, the practice followed was consequently invalid and improper.

With respect to the first ground stated by the Court of Appeals for the rejection of petitioner's contention that he should not have been compelled to take the stand before the District Court, namely, that the proceeding was not a criminal proceeding and merely ancillary to the grand jury investigation, the fact is that from the moment petitioner was returned to the District Court after having refused for the second time to answer the questions put

---

6. Even though criminal contempts are held by this Court not to be crimes within the Constitutional guaranty of trial by jury (*Green v. United States*, 2 L. ed. 2d 672), a criminal contempt proceeding must be a criminal case. See Holmes, J. in *Gompers v. United States*, 233 U.S. 604, 610, 611.

to him before the grand jury, he was in jeopardy of his liberty and the proceeding was, therefore, criminal in nature. Whether ancillary or plenary, or merely as the District Court thought, an extension of the grand jury proceeding, jeopardy for the petitioner existed and the proceeding was criminal in nature.<sup>7</sup>

This Court has held that in proceedings which result in a judgment of criminal contempt, the defendant is entitled to the rights accorded to the defendant in criminal cases. *Cammer v. U. S.*, 350 U. S. 399, 403; *Re Michael*, 326 U. S. 224; *Nye v. U. S.*, 313 U. S. 33; *Michaelson v. U. S.*, 266 U. S. 42, 66; *Gompers v. Buck's Stove & Range Co.*, 221 U. S. 418, 444.

And, as pointed out in *U. S. v. Lawn*, 115 F. Supp. 674, 677, it is in a criminal case "a clear violation of a defendant's right against self-incrimination under the Fifth Amendment of the Constitution to compel him to take the stand, testify and produce his records, relating to the matter with which he is charged \* \* \* it would invalidate the trial. \* \* \* Title 18 U. S. C. A., §3481 makes a defendant a competent witness *at his own request*. It is thus improper to call him as a witness without a request on his part". [Emphasis in original] *Gompers v. Buck's Stove & Range Co.*, 221 U. S. 418, 444. See *U. S. v. Scully*, 225 F. 2d 113 (C. A. 2).

Thus this case presents basic and important questions of constitutional law affecting criminal contempt proceedings and requiring the vindication and re-establishment of Rule 42(b). It is clear that here not even the minimal procedural requirements of Rule 42(b) were observed and Rule 42(a) was misapplied and abused.

#### **D. The Secrecy Of The Proceedings.**

A vital defect in the proceedings in the District Court was the surrounding secrecy.

<sup>7</sup> See footnote 6 *supra*.

While the record does not show that the courtroom was cleared by the Court on April 8, 1957 (the day conviction was had) that it was cannot factually be disputed and the Court of Appeals assumed such fact (R. 62). And the prosecutor on April 5, 1957 said to the Court that it is the procedure to clear the courtroom (R. 6).

In *Re Oliver*, 333 U. S. 257, this Court held that a contempt proceeding and sentence must be public.

The Court of Appeals (R. 62) rejected this contention on the ground it had not been raised in the District Court.

The right to a public trial being so fundamental, the infringement thereof cannot, it is respectfully submitted, be overlooked on appeal or in this Court, because of counsel's failure to raise it in the trial court.

#### POINT IV

**The sentence was an abuse of discretion and improper.**

In this case petitioner received a sentence of one year and three months. The Court of Appeals held that the sentence did not violate the Eighth Amendment to the Constitution, that it was not an abuse of discretion and that the Court could impose a coercive sentence in a criminal contempt proceeding without a purge clause.

The Court of Appeals here held the sentence proper in view of the sentences in *Warring v. Huff*, 122 F. 2d 641 (App. D. C.) [two consecutive sentences of thirteen months]; *Conley v. U. S.*, 59 F. 2d 929 (C. A., 8) [two years]; and *Hill v. U. S.*, 300 U. S. 105 [concurrent sentences of a year and a day and two years].

On the other hand the Court of Appeals ignored much lesser sentences imposed by District Courts in its circuit upon recalcitrant grand jury witnesses. In *U. S. v. Gordon*, 236 F. 2d 916, the sentence was six months; in *U. S. v.*

*Courtney*, 236 F. 2d 921—three months; in *U. S. v. Trock*, 232 F. 2d 839—four months; in *U. S. v. Curcio*, 234 F. 2d 470—six months; and in *U. S. v. Weinberg*, 65 F. 2d 394—sixty days.

Both courts below omitted to consider as an element in determining the sentence the penalty attached to the substantive criminal offense involved. Here, under Section 322 of the Interstate Commerce Act, the only punishment which could be imposed upon petitioner is a fine. This failure to consider the quantum of the penalty attached to the substantive criminal offenses is in conflict with *Moore v. U. S.*, 150 F. 2d 323 (C. A. 10).

The United States Attorney did not request a specific sentence but insisted upon a strong coercive sentence, as he characterized it, and this sentence was the result.

This Court has held that the sentence in a criminal contempt proceeding must be punitive and not coercive. *U. S. v. United Mine Workers*, 330 U. S. 258, 302. On the other hand, if the sentence could be coercive, a purge clause necessarily had to be included which was not done here.

The sentence was, therefore, an abuse of discretion and improper.

## CONCLUSION

**The judgment of conviction of petitioner for criminal contempt should be reversed and his acquittal directed.**

Respectfully submitted,

MYRON L. SHAPIRO and

J. BERTRAM WEGMAN,

*Counsel for Petitioner.*

MYRON L. SHAPIRO,

*Of Counsel.*

## APPENDIX TO BRIEF

### Statutes and Rules

*Motor Carriers Act, Immunity Provision, Title 49, U.S.C., Ch. 8, Section 305(d):*

"So far as may be necessary for the purposes of this chapter, the Commission and the members and examiners thereof and joint boards shall have the same power to administer oaths, and require by subpoena the attendance and testimony of witnesses and the production of books, papers, tariffs, contracts, agreements, and documents, and to take testimony by deposition, relating to any matter under investigation, as the Commission has in a matter arising under chapter 1 of this title; and any person subpoenaed or testifying in connection with any matter under investigation under this chapter shall have the same rights, privileges, and immunities and be subject to the same duties, liabilities, and penalties as though such matter arose under chapter 1 of this title, unless otherwise provided in this chapter."

*Interstate Commerce Act, Immunity Provision, Title 49, U.S.C., Ch. 2, Section 46:*

"No person shall be excused from attending and testifying or from producing books, papers, tariffs, contracts, agreements, and documents before the Interstate Commerce Commission, or in obedience to the subpoena of the commission, whether such subpoena be signed or issued by one or more commissioners, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of chapter 1 of this title on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of

him, may tend to criminate him or subject him to a penalty or forfeiture. But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing, concerning which he may testify, or produce evidence, documentary or otherwise, before said commission, or in obedience to its subpoena, or the subpoena of either of them, or in any such case or proceeding: *Provided*, That no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying. Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, tariffs, contracts, agreements, and documents, if in his power to do so, in obedience to the subpoena or lawful requirement of the commission shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by fine not less than \$100 nor more than \$5,000, or by imprisonment for not more than one year or by both such fine and imprisonment."

*Federal Trade Commission Act, Immunity Provision,*  
Title 15, U.S.C., Ch. 2, Section 49:

"For the purposes of sections 41-46 and 47-58 of this title the commission, \* \* \* shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. \* \* \*

No person shall be excused from attending and testifying or from producing documentary evidence before the commission or in obedience to the subpoena of the commission on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or sub-

jected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before the commission in obedience to a subpoena issued by it \* \* \*."

*Securities Act of 1933, Immunity Provision, Title 15, U.S.C., Ch. 2A, Section 77v (c):*

"No person shall be excused from attending and testifying or from producing books, papers, contracts, agreements, and other documents before the Commission, or in obedience to the subpoena of the Commission or any member thereof or any officer designated by it, or in any cause or proceeding instituted by the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him, may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying."

*Merchant Marine Act, 1936, Immunity Provision, Title 46, U.S.C., Section 1124(c):*

"No person shall be excused from attending and testifying or from producing books, papers, or other documents before the Board, or any member or officer or employee thereof, or the Secretary, in any investigation instituted by the Board or the Secretary under this chapter, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or sub-

ject him to a penalty or forfeiture; but no person shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, \* \* \*."

*Perishable Commodities Act, Immunity Provision, Title 7, U.S.C., Section 499m (f):*

"No person shall be excused from attending, testifying \* \* \* before the Secretary or any officer or employee designated by him, in obedience to the subpoena of the Secretary or any such officer or employee, in any cause or proceeding, based upon or growing out of any alleged violation of this chapter, \* \* \* upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him \* \* \*. But no natural person shall be prosecuted \* \* \* for or on account of any transaction, matter, or thing, concerning which he is compelled under oath so to testify, \* \* \* before the Secretary or any officer or employee designated by him, in obedience to the subpoena of the Secretary, or any such officer or employee, \* \* \* or in any such cause or proceeding: \* \* \*."

*Taft-Hartley Act, Immunity Provision, Title 29, U.S.C., Section 161(3):*

"No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted

\* \* \* for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, \* \* \*"

### **Federal Rules of Criminal Procedure:**

#### *Rule 42. Criminal Contempt [18 U.S.C.A.].*

"(a) *Summary Disposition.* A criminal contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. The order of contempt shall recite the facts and shall be signed by the judge and entered of record.

"(b) *Disposition Upon Notice and Hearing.* A criminal contempt except as provided in subdivision (a) of this rule shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such. The notice shall be given orally by the judge in open court in the presence of the defendant or, on application of the United States attorney or of an attorney appointed by the court for that purpose, by an order to show cause or an order of arrest. The defendant is entitled to a trial by jury in any case in which an act of Congress so provides. He is entitled to admission to bail as provided in these rules. If the contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial or hearing except with the defendant's consent. Upon a verdict or finding of guilt the court shall enter an order fixing the punishment.

### **Code of Criminal Procedure:**

#### **§401. Title 18, U.S.C. Power of court**

"A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—

"(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

"(2) Misbehavior of any of its officers in their official transactions;

"(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command."

#### **§3481, Title 18, U.S.C. Competency of accused**

"In trial of all persons charged with the commission of offenses against the United States and in all proceedings in courts martial and courts of inquiry in any State, District, Possession or Territory, the person charged shall, at his own request, be a competent witness. His failure to make such request shall not create any presumption against him."

#### **China Trade Act, Title 15, U.S.C., §155.**

"(a) For the efficient administration of the functions vested in the registrar by this chapter, he may require, by subpoena issued by him . . .

(1) the attendance of any witness and the production of any book, paper, document, or other evidence. . . . The registrar, or any officer, employee, or agent of the United States authorized in writing by him, may administer oaths and examine any witness. . . .

"(c) No person shall be excused from so attending and testifying \* \* \* on the ground that the testimony \* \* \* required of him may tend to incriminate him \* \* \* but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing as to which, in obedience to a subpoena and under oath, he may so testify \* \* \*."

*Social Security Act, Immunity Provision, Title 42, U.S.C., § 405, (d), (f).*

"(d) For the purpose of any hearing, investigation, or other proceeding authorized or directed under sections under this subchapter, or relative to any other matter within his jurisdiction hereunder, the Secretary shall have power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the Secretary \* \* \*."

"(f) No person so subpoenaed or ordered shall be excused from attending and testifying \* \* \* on the ground that the testimony or evidence required of him may tend to incriminate him \* \* \* but no person shall be prosecuted \* \* \* for, or on account of, any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence \* \* \*."

*Atomic Energy Act, Immunity Provision, Title 42, U.S.C., § 2201.*

"(c) make such studies and investigations, obtain such information, and hold such meetings or hearings as the Commission may deem necessary or proper to assist it in exercising any authority provided in this chapter, or in the administration or enforcement of this chapter, or any regulations or

orders issued thereunder. For such purposes the Commission is authorized to administer oaths and affirmations, and by subpoena to require any person to appear and testify, or to appear and produce documents, or both, at any designated place. No person shall be excused from complying with any requirements under this paragraph because of his privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1893, shall apply with respect to any individual who specifically claims such privilege."

*Rent Control Act, Immunity Provision, Title 50, U.S.C., War App., § 1896.*

"(f) (1) The President is authorized to make such studies and investigations, to conduct such hearings, and to obtain such information, as he deems necessary or proper to assist him in prescribing any regulation or order under this Act . . . or in the administration and enforcement of this Act . . . and regulations and orders prescribed thereunder.

"(3) For the purpose of obtaining information under this subsection, the President may by subpoena require any person to appear and testify or to appear and produce documents, or both, at any designated place. . . .

"(6) No person shall be excused from attending and testifying or producing documents or from complying with any other requirement under this subsection because of his privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1893, shall apply with respect to any individual who specifically claims such privilege."

*Motor Carriers Act*, Title 49, U.S.C., § 322.

"Any person knowingly and willfully violating any provision of this chapter, or any rule, regulation, requirement, or order thereunder, or any term or condition of any certificate, permit, or license, for which a penalty is not otherwise herein provided, shall, upon conviction thereof, be fined not more than \$100 for the first offense and not more than \$500 for any subsequent offense. Each day of such violation shall constitute a separate offense.

\* \* \* \* \*

"(c) Any person, whether carrier, shipper, consignee" or broker, or any officer, employee, agent, or representative thereof, who shall knowingly offer, grant, or give, or solicit, accept, or receive any rebate, concession, or discrimination in violation of any provision of this chapter, or who by means of any false statement or representation or by the use of any false or fictitious bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, deposition, lease, or bill of sale, or by any other means or device, shall knowingly and willfully assist, suffer or permit any person or persons, natural or artificial, to obtain transportation of passengers or property subject to this chapter for less than the applicable rate, fare, or charge, or who shall knowingly and willfully by any such means or otherwise fraudulently seek to evade or defeat regulation as in this chapter provided for motor carrier or brokers, shall be deemed guilty of a misdemeanor and upon conviction thereof be fined not more than \$500 for the first offense and not more than \$2,000 for any subsequent offense.

"(d) Any special agent, accountant, or examiner who knowingly and willfully divulges any fact or information which may come to his knowledge during the course of any examination or inspection

made under authority of section 320 of this title, except as he may be directed by the Commission or by a court or judge thereof, shall be guilty of a misdemeanor and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not more than \$500 or imprisonment for not exceeding six months, or both."

*United States Constitution, Amendments V, VI and VIII.*

V

"No person \* \* \* shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law;"

VI

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury \* \* \* and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defense;"

VIII

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

*Commodity Exchange Act, Title 7, U.S.C. (1946 ed.), §15.*

"For the purpose of securing effective enforcement of the provisions of this chapter, the pro-

visions, including penalties, of sections 12 and 46-48 of Title 49, as amended and supplemented relating to the attendance and testimony of witnesses, the production of documentary evidence, and the immunity of witnesses, are made applicable to the power, jurisdiction, and authority of the Secretary of Agriculture, the said commission, and said referee in proceedings under this chapter, and to persons subject to its provisions."

*Immunity Act of 1954, Title 18, U.S.C., §3486.*

"(c) Whenever in the judgment of a United States attorney the testimony of any witness \* \* \* in any case or proceeding before any grand jury or court of the United States involving any interference with or endangering of, or any plans or attempts to interfere with or endanger, the national security or defense of the United States by treason, sabotage, espionage, sedition, seditious conspiracy, \* \* \* is necessary to the public interest, he, upon the approval of the Attorney General, shall make application to the court that the witness shall be instructed to testify or produce evidence subject to the provisions of this section, and upon order of the court such witness shall not be excused from testifying or from producing books, papers, or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture."

*Emergency Price Control Act, 56 Stat. 30 (1942) §202.*

"(a) The Administrator is authorized to make such studies and investigations, and to obtain such information as he deems necessary or proper to assist him in prescribing any regulation or order under this Act or in the administration and enforcement of this Act and regulations, orders, and price schedules thereunder.

"(c) For the purpose of obtaining any information under subsection (a), the Administrator may by subpoena require any other person to appear and testify or to appear and produce documents, or both, at any designated place.

"(g) No person shall be excused from complying with any requirements under this section because of his privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1893 \* \* \* shall apply with respect to any individual who specifically claims such privilege."

*Federal Deposit Insurance Corporation Law, Title 12, U.S.C., §1820.*

"(a) The Board of Directors shall administer the affairs of the Corporation fairly and impartially and without discrimination. \* \* \*

"(c) For the purpose of any hearing under this chapter, the Board of Directors, any member thereof or any person designated by the Board of Directors to conduct any such hearing, is empowered to administer oaths and affirmations, subpoena any officer or employee of the insured bank, compel his attendance, take evidence, \* \* \*. For the purpose of any hearing, examination, or investigation under this chapter, the Board of Directors may apply to any judge or clerk of any court of the United States \* \* \* to issue a subpoena commanding each person to whom it is directed to attend and give testimony \* \* \* at a time and place and before a person therein specified. \* \* \*

"(d) No person shall be excused from attending and testifying or from producing books, records, or other papers in obedience to a subpoena issued under the authority of this chapter on the ground

that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture; \* \* \*

*Industrial Alcohol Act*, 53 Stat. 363, §3119, Title 26, U.S.C. (1946 Ed.), now §5315, Title 26, U.S.C.

"No person shall be excused, on the ground that it may tend to incriminate him or subject him to a penalty or forfeiture, from attending and testifying, or producing books, papers, documents, and other evidence in obedience to a subpoena of any court in any suit or proceeding based upon or growing out of any alleged violation of this part; \* \* \*"

*Civil Aeronautics Act*, Title 49, U.S.C., Ch. 9, §644(i).

"(i) No person shall be excused from attending and testifying, or from producing books, papers, or documents before the Board, or in obedience to the subpoena of the Board, or in any cause or proceeding, criminal or otherwise \* \* \* on the ground, or for the reason, that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; \* \* \*

*Export Controls Act*, Title 50, App., U.S.C., §2026 (a), (b).

"(a) To the extent necessary or appropriate to the enforcement of this Act the head of any department or agency exercising any functions hereunder (and officers or employees of such department or agency specifically designated by the head thereof) may make such investigations and obtain such information from, require such reports or the keeping of such records by, make such inspection of the books, records, and other writings, premises, or property of, and take the sworn testimony of, any person. In addition, such officers or employees may

administer oaths or affirmations, and may by subpoena require any person to appear and testify \* \* \*

“(b) No person shall be excused from complying with any requirements under this section because of his privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1893 (27 Stat. 443) shall apply with respect to any individual who specifically claims such privilege.”

*Defense Production Act of 1950, Title 50, U.S.C., App. §2155.*

“(a) The President shall be entitled, while this Act is in effect and for a period of two years thereafter, by regulation, subpoena, or otherwise, to obtain such information from, require such reports and the keeping of such records by, make such inspection of the books, records, and other writings, premises or property of, and take the sworn testimony of, and administer oaths and affirmations to, any person as may be necessary or appropriate, in his discretion, to the enforcement or the administration of this Act and the regulations or order issued thereunder. \* \* \*

“(b) No person shall be excused from complying with any requirements under this section or from attending and testifying or from producing books, papers, documents, and other evidence in obedience to a subpoena before any grand jury or in any court or administrative proceeding based upon or growing out of any alleged violation of this Act on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture;”

*War and Defense Contract Acts of 1951*, Title 50, App., U.S.C., §1152(a)(4).

"(4) For the purpose of obtaining any information, verifying any report required, or making any investigation pursuant to paragraph (3), the President may administer oaths and affirmations, and may require by subpoena or otherwise the attendance and testimony by witnesses. \* \* \* No person shall be excused from attending and testifying or from producing any books, records, or other documentary evidence or certified copies thereof or physical evidence in obedience to any such subpoena, or in any action or proceeding which may be instituted under this subsection, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture;"

*Second War Powers Act*, Title 50, App., U.S.C. §643a.

"For the purpose of obtaining any information or making any inspection or audit pursuant to section 1301, any agency acting hereunder, or the Chairman of the War Production Board, as the case may be, may administer oaths and affirmations and may require by subpoena or otherwise the attendance and testimony of witnesses. \* \* \* No person shall be excused from attending and testifying or from producing any books, records, or other documentary evidence or certified copies thereof or physical evidence in obedience to any such subpoena, or in any action or proceeding which may be instituted under this section, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject to a penalty or forfeiture;"

*Investment Advisers Act*, Title 15, U.S.C., §80b-9.

"(d) No person shall be excused from attending and testifying or from producing books, papers,

correspondence, memoranda, contracts, agreements, or other records and documents before the Commission, or in obedience to the subpoena of the Commission or any member thereof or any officer designated by it, or in any cause or proceeding instituted by the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture;”

*Investment Companies Act*, Title 15, U.S.C., §80a-41.

“(d) No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, contracts, agreements, or other records and documents before the Commission, or in obedience to the subpoena of the Commission, or any member thereof or any officer designated by it, or in any cause or proceeding instituted by the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture;”

*Public Utility Holding Company Act*, Title 15, U.S.C., §79r.

“(e) No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, contracts, agreements, or other records and documents before the Commission, or in obedience to the subpoena of the Commission or any member thereof or any officer designated by it, or in any cause or proceeding instituted by the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture;”

*Securities Exchange Act*, Title 15, U.S.C., §78u.

"(d) No person shall be excused from attending and testifying or from producing books, papers, contracts, agreements, and other records and documents before the Commission, or in obedience to the subpoena of the Commission or any member thereof or any officer designated by it, or in any cause or proceeding instituted by the Commission, on the ground that the testimony or evidence, documentary or otherwise, required by him may tend to incriminate him or subject him to a penalty or forfeiture;"

*Shipping Act of 1916*, Title 46, U.S.C., §827.

"No person shall be excused, on the ground that it may tend to incriminate him or subject him to a penalty or forfeiture, from attending and testifying, or producing books, papers, documents, and other evidence, in obedience to the subpoena of the Commission or of any court in any proceeding based upon or growing out of any alleged violation of this chapter;"

*Narcotics Control Act*, Title 18, U.S.C., §1406.

"Whenever in the judgment of a United States attorney the testimony of any witness, or the production of books, papers, or other evidence by any witness, in any case or proceeding before any grand jury or court of the United States involving any violation of— \* \* \* is necessary to the public interest, he, upon the approval of the Attorney General, shall make application to the court that the witness shall be instructed to testify \* \* \*. But no such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence,

nor shall testimony so compelled be used as evidence in any criminal proceeding \* \* \* against him in any court.

*Natural Gas Act*, Title 15, U.S.C., 717m.

"(h) No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, contracts, agreements, or other records and documents before the Commission, or in obedience to the subpoena of the Commission or any member thereof or any officer designated by it, or in any cause or proceeding instituted by the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture;"

*Federal Communications Act*, 47 U.S.C., §409 (1):

"No person shall be excused from attending and testifying or from producing books, papers, schedules of charges, contracts, agreements, and documents before the Commission, or in obedience to the subpoena of the Commission, whether such subpoena be signed or issued by one or more commissioners, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of this chapter, or of any amendments thereto, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty of forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence."